
In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)	
)	
LORETTA VAN DAMM,)	Chapter 13 Case
)	
<i>Debtor.</i>)	Number <u>98-42149</u>
)	
)	
ESTATE OF DOROTHY PRITCHETT,)	
)	
<i>Movant,</i>)	
)	
v.)	
)	
LORETTA VAN DAMM,)	
)	
<i>Respondent.</i>)	

MEMORANDUM AND ORDER
ON MOTION FOR RELIEF FROM STAY

Debtor's case was filed under Chapter 13 on July 20, 1998. On March 9, 1999, a Motion for Relief from Stay was filed by the Estate of Dorothy Pritchett requesting permission from this Court to continue prosecution of a fraud action in which the Debtor is a co-defendant with her parents.¹ Movant also petitions this Court to dismiss the case due to bad faith on the part of the Debtor or alternatively, objects to the confirmation of Debtor's Chapter 13 plan. This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(b)(2)(F). Pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure, I make the following Findings of Fact and Conclusions of Law.

¹A companion Order granting a similar Motion for Relief From Stay was issued on August 12, 1999. See In the matter of Richard H. Ward, Dolores E. Ward, Debtors; Estate of Dorothy Pritchett v. Richard H. Ward and Dolores E. Ward, Chapter 13 Case Number 98-42162.

FINDINGS OF FACT

Dorothy Pritchett is the late aunt of Debtor Loretta Van Damm. Underlying much of the litigation between these parties lies the fact that Dorothy Pritchett disinherited her brother, Richard Ward, who is the Debtor's father. In an earlier will, Ms. Pritchett left one-half of her estate to Mr. Ward. In August of 1992, Ms. Pritchett executed a new will excluding Mr. Ward and his family from her estate, instead leaving the one-half share to Donald Fraasa, a friend of Ms. Pritchett serving as the Personal Representative of her Estate.

Upon Ms. Pritchett's death Mr. and Mrs. Ward filed a caveat challenging the validity of the will, alleging undue influence practiced upon Ms. Pritchett by the Personal Representative of her estate, Donald Fraasa. The estate, in defense, asserted that Mr. Ward had been disinherited because Ms. Pritchett disapproved of his chronic alcoholism. In the course of discovery, the Circuit Court for Anne Arundel County in Maryland found that the Wards materially altered Mr. Ward's medical records in order to delete any references of his alcoholism from them. Upon discovery of that alteration, the caveat to the will was voluntarily dismissed and the estate petitioned the court for sanctions against the Wards.

The Maryland Court concluded that while the Wards had altered documents, Maryland law did not permit an award of damages for fraud perpetrated upon a court. That ruling is now under appeal. The trial judge in the caveat case did award sanctions relating to costs incurred by the estate during litigation. On March 11, 1998, the estate filed a separate fraud action in the State of Maryland alleging that the Debtor and the Wards acted in concert, committing fraud and tortuous acts against the Estate of Dorothy Pritchett. The filing of this Chapter 13 case by the Debtor

on July 20 automatically stayed the appeal of the trial court's decision concerning damages for fraud perpetrated on the Maryland court and also halted the independent fraud action filed by the estate.

The fraud action brought by the Estate of Dorothy Pritchett contains several allegations specifically concerning the Debtor, Loretta Van Damm. It alleges that the Debtor and her parents sought to create a fraudulent case respecting the testator in the caveat proceeding in order to loot the testator's estate. The Debtor allegedly provided direct counsel to the Wards as part of the conspiracy to cover up Richard Ward's alcoholism in the caveat proceeding. Ms. Van Damm and her mother allegedly sought to intimidate a witness for the estate in the caveat proceeding, inducing her to withdraw a voluntary agreement to give a deposition in said case. Ms. Van Damm and her parents also filed an allegedly false complaint with the Office of Adult protective Services concerning Ms. Pritchett's personal representative, Donald Fraasa, which was promptly dismissed. Ms. Van Damm and her mother allegedly attempted to influence another witness in the caveat proceeding. Finally, it is alleged that Ms. Van Damm suggested that the incriminating medical records concerning her father be falsified and that she assisted in that falsification.

In short, the allegations surrounding this case implicate Debtor, Ms. Van Damm, in the perpetration of fraud on courts of competent jurisdiction concerning the caveat proceeding in the State of Maryland. The fraud action pending in Maryland court seeks \$100,000 in compensatory and \$500,000 in punitive damages. However, the automatic stay provision of the Bankruptcy Code halted this fraud action, along with the appeal of the decision handed down by the Court of Anne Arundel County, when Debtor filed her case under Chapter 13 of the Court. The Estate of Dorothy Pritchett then filed a claim in the Debtor's bankruptcy case in the amount of \$600,000.00, an estimated claim, as the liability issue in the fraud case has not been adjudicated.

The Estate of Dorothy Pritchett brings this motion seeking relief from the automatic stay in order to prosecute the independent fraud action pending in Maryland and to continue with the appeal of the decision in the caveat case. The estate also moves that Debtor's Chapter 13 Plan be dismissed for filing in bad faith or, alternatively, objects to its confirmation. Because I have concluded that stay relief should be granted in order to permit the Maryland litigation to proceed, I find it unnecessary at this juncture to address the Objections to Confirmation or Motion to Dismiss, factually or legally.

CONCLUSIONS OF LAW

11 U.S.C. § 362(d) provides, in pertinent part:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay —

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest.

“Cause” under Section 362(d)(1) may be based upon whether or not the matter is suitable for abstention pursuant to 28 U.S.C. § 1334(c)(1) or (2). Section 1334(c) provides:

(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district

court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

Discretionary Abstention

_____ I hold that discretionary abstention is appropriate pursuant to Section 1334(c)(1).

Under this section, a court may exercise its discretion in abstaining from hearing a matter where to do so is in the interest of justice or in the interest of comity with state courts. In considering whether to abstain under Section 1334(c)(1), bankruptcy courts have examined a variety of factors:

1. the effect of abstention on the efficient administration of the bankruptcy estate;
2. the extent to which state law issues predominate over bankruptcy issues;
3. the difficulty or unsettled nature of the applicable law;
4. the presence of a related proceeding commenced in state court or other non-bankruptcy court;
5. the basis of bankruptcy jurisdiction, if any, other than 28 U.S.C. § 1334;
6. the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
7. the substance rather than form of an asserted “core” proceeding;
8. the feasibility of severing state law claims from core bankruptcy matters to all judgments to be entered in state court with enforcement left to the bankruptcy court;
9. the burden of the bankruptcy court’s docket;
10. the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping;
11. the existence of a right to a jury trial;

12. the presence in the proceeding of non-debtor parties.

In re Perfect Home L.L.C., 231 B.R. 358, 361 (Bankr. N.D.Ala. 1999); *see also* In re Wedlo, Inc., 204 B.R. 1006, 1016 (Bankr. N.D.Ala. 1996).

The issues raised in the fraud action are questions of state law that are unsettled. State law issues predominate over bankruptcy issues. There are no core bankruptcy issues asserted in the state court proceeding. Efficient administration of the bankruptcy estate will not suffer, because this Court may allow the state forum to resolve state issues and come to a final judgment, yet reserve the enforcement of any judgement to the bankruptcy case. Most important, because I have previously ruled that the stay be lifted in the Debtor's parents' case and because the allegations against her are inexorably intertwined with those that relate to her parents, it would be folly to bifurcate the trial of the estate's case against them from the case against her.² Thus, I conclude that this Court should abstain from hearing the merits of the Estate's claim against the Debtor.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the motion to lift the automatic stay is GRANTED. Movant is permitted to prosecute its action against Debtor to judgment. Enforcement of any judgment remains stayed and will remain in the jurisdiction of this Court.

² Estate of Dorothy Pritchett v. Richard H. Ward (*In re Ward*), Ch. 13 Case No. 98-42162, Adv. No. 98-04241 (S.D. Ga. Aug. 12, 1999).

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of August, 1999.